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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

GEORGE VALVERDE, as Director of the
Department of Motor Vehicles, etc.,

Defendant and Appellant,

v.

WILLIAM WHITE,

Plaintiff and Respondent.

D068861

(Super. Ct. No. ECU08557)

APPEAL from a judgment of the Superior Court of Imperial County, L. Brooks
Anderholt, Judge. Affirmed.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney
General, Julie L. Garland, Assistant Attorney General, Celine M. Cooper and Evan
Richard Sorem, Deputy Attorneys General, for Defendant and Appellant.

Rodney Thomas Gould for Plaintiff and Respondent.

The Department of Motor Vehicles (DMV) suspended William White's driver's
license for driving with 0.08 percent or more alcohol in his blood, and an administrative

hearing officer upheld the suspension. The trial court granted White's ensuing petition for a writ of mandate and ordered the DMV to set aside its order suspending White's driver's license. The court excluded the chemical breath test results, finding Bureau of Land Management (BLM) Officer G. Filer did not observe White for 15 minutes before administering the tests, as required by title 17, section 1219.3 of the California Code of Regulations (hereafter, regulation 1219.3).¹ For the same reason, the court found the test results insufficiently reliable to be admitted under *People v. Adams* (1976) 59 Cal.App.3d 559 (*Adams*). The DMV contends the trial court erred in granting White's petition.

We affirm the judgment. Chemical breath test results require proper foundation to be admissible. Foundation may consist of title 17 compliance *or* independent evidence of the foundational elements in *Adams*. (*People v. Williams* (2002) 28 Cal.4th 408, 414, 416 (*Williams*).) Here, substantial evidence supports the trial court's finding that Officer Filer failed to observe White for 15 minutes before administering the chemical breath tests. The trial court could reasonably conclude the breath test results lacked foundation under title 17 or *Adams*, and its exclusion of the results was not an abuse of discretion.

¹ Regulation 1219.3 provides: "A breath sample shall be expired breath which is essentially alveolar in composition. The quantity of the breath sample shall be established by direct volumetric measurement. *The breath sample shall be collected only after the subject has been under continuous observation for at least fifteen minutes prior to collection of the breath sample, during which time the subject must not have ingested alcoholic beverages or other fluids, regurgitated, vomited, eaten or smoked.*" (Italics added.) Crucial to this appeal is whether, during the 15-minute observation period before the evidentiary breath tests, White burped, introducing the possibility that mouth alcohol skewed the test results.

FACTUAL AND PROCEDURAL BACKGROUND

On October 11, 2014, at approximately 8:20 p.m., Officer Filer stopped White in Imperial County for driving his off-highway vehicle without a safety helmet, in violation of Vehicle Code section 38601. Officer Filer noticed empty beer cans in the rear of the vehicle and asked if White or the passengers had been drinking alcohol. White replied, "Yes sir . . . I have had a couple." "Oh about four beers throughout the day." Officer Filer observed White's bloodshot and watery eyes, flushed face, and unsteady gait and smelled alcohol on his breath. At 8:43 p.m., after White failed a series of field sobriety tests, Officer Filer arrested him.

Officer Filer's BLM Investigation Report stated he observed White from 8:21 p.m. to 8:48 p.m. Officer Filer administered a preliminary alcohol screening (PAS) test at 8:48 p.m. with a Drager Alcotest 7510 Machine, which showed White's BAC at 0.085 percent. Thereafter, at 8:59 p.m. and 9:01 p.m., Officer Filer administered two evidentiary breath tests (EPAS tests) with the same Drager Alcotest device.² Both EPAS tests measured White's BAC at 0.08 percent. Officer Filer filled out DMV form 367 (DS-367) and signed the certification that he administered the EPAS tests in compliance with

² A PAS is an investigative tool used to determine whether there is reasonable cause for arrest. (Veh. Code, § 23612, subd. (h).) "Such a test is 'preliminary' in the sense that it is employed—only with the driver's actual consent—prior to any arrest, in order to assist an investigating officer in determining whether to arrest the driver." (*People v. Vangelder* (2013) 58 Cal.4th 1, 5 (*Vangelder*).) The PAS is distinguished from the " 'evidentiary' " chemical tests (EPAS) administered after arrest to test a driver's blood, breath, or urine for alcohol concentration. (*Id.* at p. 5, fn. 1.) Officer Filer explained at the administrative hearing that the Drager Alcotest device he used had two modes, a screening mode for preliminary testing and an evidentiary mode.

title 17 of the California Code of Regulations. He neglected to sign the bottom of the form to "certify under penalty of perjury" that all the information provided was true and correct. White surrendered his driver's license, and Officer Filer served him with an administrative per se suspension and revocation order before transporting him to Imperial County jail.

The DMV held an administrative per se hearing on the license suspension in January 2015. (Veh. Code, § 13558, subd. (a).) The hearing officer received the DS-367, BLM Investigation Report, and White's California driving record into evidence, over White's objections. Officer Filer testified for the DMV and gave conflicting testimony as to when White burped in relation to the EPAS tests.³ White's counsel objected to admitting the EPAS test results, arguing, inter alia, that the DMV had not laid a proper foundation. After taking the matter under submission, in January 2015, the hearing officer upheld the suspension.

In February 2015, White petitioned for writ of mandate to set aside his license suspension. (Veh. Code, § 13559, subd. (a); Code Civ. Proc., § 1094.5.) White challenged the admission of the EPAS test results, arguing Officer Filer failed to comply with the 15-minute continuous observation requirement under regulation 1219.3. He also questioned Officer Filer's qualifications to administer the breath tests and claimed the DS-367 and BLM Investigation Report were inadmissible.

³ The timing of White's burp is relevant to whether Officer Filer complied with regulation 1219.3 and/or established that the EPAS tests were properly administered. To avoid repetition, we discuss Officer Filer's testimony in the discussion section.

Following a hearing, the trial court overruled White's evidentiary objections to the BLM Investigation Report and DS-367 and to Officer Filer's qualifications. However, the court determined Officer Filer did not administer the EPAS tests after observing White continuously for 15 minutes, as required by regulation 1219.3. The court also determined the DMV had not established an alternative basis for foundation under *Adams* by showing the test results were nonetheless reliable. The court concluded there was "insufficient admissible evidence to support a finding that [White] was operating a vehicle with a blood alcohol content of .08 percent" and granted White's petition, ordering the DMV to set aside the license suspension.

The DMV timely appealed.

DISCUSSION

On appeal, the DMV claims the evidence reflects that Officer Filer observed White for 15 minutes before administering the EPAS tests. Even if Officer Filer did not comply with regulation 1219.3, the DMV contends noncompliance goes only to the weight of the EPAS test results, not their admissibility. Based on the EPAS results, the DMV claims the record shows White was driving with a BAC of 0.08 percent, in violation of Vehicle Code section 23152, subdivision (b).

We conclude substantial evidence supports the trial court's finding that Officer Filer did not comply with regulation 1219.3's 15-minute observation requirement. For the same reason, the trial court could reasonably conclude from the record that the EPAS tests were not "properly administered" as required for *Adams* foundation. The EPAS

tests therefore lacked the foundational prerequisites for admissibility, and the trial court did not abuse its discretion in excluding the test results.⁴

I

BURDENS OF PROOF AND STANDARDS OF REVIEW

License suspensions are governed by an administrative procedure referred to as the "administrative per se" law. (*Lake v. Reed* (1997) 16 Cal.4th 448, 455 (*Lake*); Veh. Code, § 13353.2.)⁵ A person whose driver's license is suspended may request an administrative review hearing, separate from the DMV's automatic internal review. (*Lake*, at pp. 455-456; Veh. Code, §§ 13353.2, subd. (c), 13353.3, subd. (a), 13558, subd. (a).) If a review hearing is requested, the DMV bears the burden of proving by a preponderance of the evidence that "the arresting officer had reasonable cause to believe the person was driving, the driver was arrested, and the person was driving with .08 percent BAC or higher." (*Lake*, at p. 456.) If the DMV proves these elements, the individual's driver's license will be suspended. (*Ibid.*)

⁴ Because we affirm the court's exclusion of the EPAS test results, we do not reach the DMV's argument that, if the results were considered, the evidence supports suspension of White's driver's license pursuant to Vehicle Code section 13353.2.

⁵ "Under the administrative per se law, the DMV must immediately suspend the driver's license of a person who is driving with .08 percent or more, by weight, of alcohol in his or her blood." (*MacDonald v. Gutierrez* (2004) 32 Cal.4th 150, 155.) "The procedure is called 'administrative per se' because it does not impose criminal penalties, but simply suspends a person's driver's license as an administrative matter upon a showing the person was arrested for driving with a certain blood-alcohol concentration, without additional evidence of impairment." (*Ibid.*)

"The DMV may satisfy its burden via the presumption of Evidence Code section 664[,]" which "creates a rebuttable presumption that blood-alcohol test results recorded on official forms were obtained by following the regulations and guidelines of title 17 [(including regulation 1219.3)]." (*Manriquez v. Gourley* (2003) 105 Cal.App.4th 1227, 1232 (*Manriquez*).) "The recorded test results are presumptively valid and the DMV is not required to present additional foundational evidence.'" (*Ibid.*) Once the DMV establishes its prima facie case, the burden shifts to the driver to show through cross-examination of the officer or other affirmative evidence that official standards were not observed. (*Id.* at p. 1233; *Roze v. Department of Motor Vehicles* (2006) 141 Cal.App.4th 1176, 1183 (*Roze*).) If this showing is made, the burden shifts back to the DMV to prove the test was reliable despite the deviation. (*Manriquez*, at p. 1233; *Roze*, at p. 1183.)

Once a driver's license is suspended, the driver may petition the superior court for writ of mandate. (Veh. Code, § 13559, subd. (a).) The trial court exercises independent judgment to determine whether the weight of the evidence supports the administrative decision. (*Lake, supra*, 16 Cal.4th at pp. 456-457; *Roze, supra*, 141 Cal.App.4th at pp. 1183-1184.) "In reviewing the administrative record, the court acts as a trier of fact; it has the power and responsibility to weigh the evidence and make its own determination about the credibility of the witnesses." (*Roze*, at p. 1184.) The trial court is "free to reweigh the evidence and substitute its own findings" on independent review. (*Ibid.*)

On appeal from a judgment granting a petition for writ of mandate, we review the record to determine whether the trial court's findings are supported by substantial evidence. (*Lake, supra*, 16 Cal.4th at p. 457; *Roze, supra*, 141 Cal.App.4th at p. 1184; *Robertson v. Zolin* (1996) 44 Cal.App.4th 147, 151-152 (*Robertson*).) " ' "We must resolve all evidentiary conflicts and draw all legitimate and reasonable inferences in favor of the trial court's decision. [Citations.] Where the evidence supports more than one inference, we may not substitute our deductions for the trial court's. [Citation.] We may overturn the trial court's factual findings only if the evidence before the trial court is insufficient as a matter of law to sustain those findings." ' " (*Lake*, at p. 457; see generally *Estate of Teel* (1944) 25 Cal.2d 520, 526 [trial court "is the sole judge of the credibility and weight of the evidence"].)

We apply a different standard to a trial court's rulings on the admissibility of evidence and to questions of law. We review admissibility rulings under the deferential abuse of discretion standard and imply " ' "whatever finding of fact [that] is prerequisite thereto." (*Molenda v. Department of Motor Vehicles* (2009) 172 Cal.App.4th 974, 986 (*Molenda*); Evid. Code, § 402, subd. (c).) "Appellate courts will disturb discretionary trial court rulings only upon a showing of a clear case of abuse and a miscarriage of justice." (*Molenda*, at p. 986.) To the extent the appeal involves statutory interpretation or other questions of law, we review such questions de novo. (*Id.*, at pp. 986-987; *Roze, supra*, 141 Cal.App.4th at p. 1184; *Manriquez, supra*, 105 Cal.App.4th at p. 1233.)

The DMV contends this appeal involves a question of statutory interpretation, subject to de novo review. It argues the trial court erroneously interpreted

regulation 1219.3, so as to require a separate 15-minute observation period after the PAS test before the EPAS tests were administered. We reject the DMV's attempt to recast a factual determination into a legal one. The trial court never held regulation 1219.3 required a separate 15-minute observation period after the PAS test and before the EPAS tests. Instead, as discussed below, it made a *factual* finding as to whether Officer Filer observed White for 15 minutes before administering the EPAS tests, as required under regulation 1219.3. We review that finding for substantial evidence and the exclusion of the EPAS test results for abuse of discretion.

II

PURPOSE OF REGULATION 1219.3

"After ingestion and absorption through the stomach walls and the intestines, ethyl alcohol enters the blood and eventually travels via the carotid arteries to the brain, where it causes intoxication and resulting mental and physical impairment." (*Vangelder, supra*, 58 Cal.4th at p. 14.) Although blood in the brain or arteries leading to the brain would be the best source to test a driver's BAC, such samples are impossible to obtain. (*Ibid.*) Hence, officers measure a driver's BAC indirectly, using samples of venous blood, breath, or urine. (*Ibid.*) Here, Officer Filer measured White's BAC with a Drager Alcotest device; EPAS tests taken at 8:59 p.m. and 9:01 p.m. indicated White was driving with a BAC of 0.08 percent, in violation of Vehicle Code section 23152, subdivision (b).

Regulation 1219.3 requires the breath sample to be collected "only after the subject has been under continuous observation for at least fifteen minutes prior to collection of the breath sample, during which time the subject must not have ingested

alcoholic beverages or other fluids, regurgitated, vomited, eaten, or smoked."⁶ The continuous observation requirement helps ensure breath test results are reliable (*Taxara v. Gutierrez* (2003) 114 Cal.App.4th 945, 948 (*Taxara*)), by ruling out the possibility that mouth alcohol or foreign matter in the mouth that could retain alcohol might skew breath test results (*Manriquez, supra*, 105 Cal.App.4th at p. 1236, fn. 3; *Roze, supra*, 141 Cal.App.4th at p. 1186). "[A]n officer observes a subject for 15 minutes prior to testing in order to ensure that the resulting sample of 'end-expiratory' deep lung, alveolar breath is not contaminated by mouth alcohol or regurgitation." (*Vangelder, supra*, 58 Cal.4th at p. 33.) "[T]he presence of mouth alcohol requires the officer to stop the test and recommence a 15-minute observation of the driver." (*Robertson, supra*, 44 Cal.App.4th at p. 152.)⁷

Noncompliance with regulation 1219.3 "goes only to the weight of the evidence, not its admissibility." (*Williams, supra*, 28 Cal.4th at p. 414.) "[A]dmissibility depends on the reliability and consequent relevance of the evidence, not the precise manner in which it was collected." (*Ibid.*) Breath test results are admissible if the "foundational

⁶ " 'Regurgitate' is defined as: 'To expel the contents of the stomach in small amounts, short of vomiting.' " (*Manriquez, supra*, 105 Cal.App.4th at p. 1236, fn. 2.) A burp or belch meets this definition.

⁷ When a person burps, alcohol could enter the mouth and skew breath test results. (Workman, *The Science Behind Breath Testing for Ethanol* (2012) 7 U. Mass. L.Rev. 110, 117, 125.) The 15-minute observation period addresses this problem by providing sufficient time for any traces of mouth alcohol to completely dissipate. (*Id.* at pp. 117, 125, 132; Taylor & Oberman, *Drunk Driving Defense* (8th ed. 2016) § 7.03; see *Guy v. State* (Ind. 2005) 823 N.E.2d 274, 277 [waiting period "during which nothing is placed in a person's mouth allows sufficient time for any mouth alcohol to dissipate"].)

prerequisites" of "properly functioning equipment, properly administered test, and qualified operator" are met. (*Adams, supra*, 59 Cal.App.3d at pp. 561, 567.) These foundational requirements may be met by showing the officer complied with applicable regulations, which is a "simplified method" of admitting breath test results into evidence. (*Williams*, at pp. 414, 416.) Alternately, foundation may be established by independent proof of the *Adams* elements of properly functioning equipment, a properly administered test, and a qualified operator. (*Id.*, at p. 414.) Thus, for example, in *Williams*, the trial court acted within its discretion in admitting breath test results despite regulatory noncompliance where the record contained other evidence of reliability. (*Id.* at pp. 417-418 & fn. 7.) By contrast, in *Roze*, the DMV failed to show the test was sufficiently reliable, and the trial court properly granted the driver's petition for a writ of mandate. (*Roze, supra*, 141 Cal.App.4th at p. 1190.)

III

SUBSTANTIAL EVIDENCE SUPPORTS THE TRIAL COURT'S JUDGMENT

In granting White's petition, the trial court found Officer Filer failed to comply with regulation 1219.3's 15-minute observation requirement before administering the EPAS tests. The court found that in doing so, the tests were also not "properly administered," as required to establish foundation under *Adams, supra*, 59 Cal.App.3d 559. Finding no foundation, the court excluded the EPAS test results and concluded there was "insufficient admissible evidence to support a finding that [White] was operating a vehicle with a [BAC] of .08 percent." The DMV challenges this ruling, claiming the evidence showed Officer Filer *did* observe White for 15 minutes before

administering the EPAS tests. We decline the invitation to reweigh evidence on appeal and conclude substantial evidence supports the judgment.

The timeline is not in dispute. Officer Filer observed White from 8:21 p.m., when he made the stop, to 8:48 p.m., when he administered the PAS test. He administered two EPAS tests at 8:59 p.m. and 9:01 p.m. White "burped a little" at some point, although the record is unclear exactly when. Notwithstanding the DMV's assertion to the contrary, the record is silent as to whether Officer Filer observed White in the 11-minute gap between the 8:48 p.m. PAS test and the 8:59 p.m. EPAS test.

At the hearing on White's petition, the trial court asked both parties to identify when the 15-minute observation period took place in relation to the EPAS tests and White's burp. Counsel for the DMV argued Officer Filer observed White for 15 minutes *after* the burp and before administering the EPAS tests, to which the trial court stated, "I'm not sure that is what it says. That's why I was asking the question. The record is a little vague."

We agree that the record is vague as to when White burped, a fact of consequence as to whether mouth alcohol may have skewed the EPAS test results. At the administrative hearing, the DMV sought to establish compliance with regulation 1219.3 to buttress the EPAS results, asking Officer Filer:

"Did you observe any prohibitive functions from Mr. White prior to the administration of the breath test that would have an adverse effect on the results that were obtained, and specifically, did he vomit, regurgitate, eat anything, smoke anything, chew gum or ingest any fluids prior to administration of the chemical test within 15 minutes?"

Officer Filer replied in the *affirmative*:

"I don't remember him regurgitating or anything like that. *I remember he had burped a little*, and I told him, I said, well now we have to start [the] 15-minute observation period over. And during that time he was almost hyperventilating. I asked him what he was doing, and he said -- basically he said he was trying to get more oxygen into his system. I asked him if he was trying to alter the test, and he said -- he said no" (Italics added.)

The DMV's counsel attempted to rehabilitate Officer Filer, asking:

"So with that, you're saying that he burped a little bit, and then you sat him through an entire additional 15-minute observation period before actually submitting him to the chemical evidentiary test that reflected the results that we have here on Page 1 of the DS 367?"

Officer Filer replied, "Yeah, that's correct."

On cross-examination, White's counsel asked Officer Filer if he remembered "exactly when [White] burped, like how close in time to when you administered the breath test that was?" Officer Filer replied, "No. I don't remember specifically." White's counsel then asked whether Officer Filer could be sure the burp happened "more than 15 minutes prior to the administration of the test." Officer Filer replied he was "very sure" and that he recalled telling White not to burp again, as they would need to restart the 15-minute observation period. It is not clear whether Officer Filer was referring to the PAS test or the EPAS tests in giving that answer. Officer Filer also testified on cross-examination that the burp happened when White was "almost hyperventilating," which, according to his BLM Investigation Report, happened around the time the EPAS tests were administered.

Viewed together, Officer Filer gave conflicting testimony, suggesting both that the burp happened within 15 minutes of the EPAS tests *and* more than 15 minutes before the EPAS tests. The only observation period referenced in the sworn BLM Investigation Report was from 8:21 p.m. to 8:48 p.m., before the PAS test. Based on Officer Filer's testimony, it is possible that at some unknown point during this observation period, White burped. If so, it is unclear whether Officer Filer observed White for a full 15 minutes after the burp before administering the EPAS tests; there is no evidence as to precisely when that observation would have taken place. Alternately, it is also possible from the record that White burped around the time of the EPAS tests. If that occurred, Officer Filer plainly did not observe White for 15 minutes before the EPAS tests to ensure mouth alcohol did not contaminate the results.

The trial court reasonably concluded that White met his burden to show the test was not properly administered pursuant to regulation 1219.3. (*Robertson, supra*, 44 Cal.App.4th at p. 153; *Manriquez, supra*, 105 Cal.App.4th at p. 1233; Evid. Code, § 664.) The DMV points to Officer Filer's testimony on direct that he observed White for 15 minutes *after* the burp, but the trial court implicitly found this testimony not to be credible. The sole question before us is whether there is substantial evidence, contradicted or uncontradicted in the record, to support the court's factual determinations. (*Roze, supra*, 141 Cal.App.4th at p. 1187; *Lake, supra*, 16 Cal.4th at p. 457.) On the record before us, we are satisfied there is.

Once White showed noncompliance with regulation 1219.3, the burden shifted to the DMV to prove the EPAS tests were reliable despite the deviation. (*Manriquez, supra*,

105 Cal.App.4th at pp. 1232-1233; *Roze, supra*, 141 Cal.App.4th at p. 1183.) "[I]f the test procedure does not comply with the regulations," the DMV must offer additional evidence to "qualify the personnel involved in the test, the accuracy of the equipment used and the reliability of the method followed before the results can be admitted." (*Adams, supra*, 59 Cal.App.3d at p. 567; see *Williams, supra*, 28 Cal.4th at p. 416 [absent regulatory compliance, results can be admitted only upon showing of *Adams* foundational requirements].) The DMV failed to meet its burden; it did not offer any evidence the test was nonetheless "properly administered" despite Officer Filer's failure to comply with regulation 1219.3. (*Adams*, at pp. 561, 567; *Manriquez*, at p. 1233; *Robertson, supra*, 44 Cal.App.4th at p. 153.)⁸

The DMV is correct that regulatory noncompliance affects only the *weight* of breath test results, not their admissibility. (*Adams, supra*, 59 Cal.App.3d at p. 567; *Williams, supra*, 28 Cal.4th at p. 414.) However, breath test results must have foundation to be admissible, and foundation may be established *either* through regulatory compliance *or* evidence of "properly functioning equipment, properly administered test, and qualified operator" under *Adams*. (*Adams*, at p. 567; *Williams*, at p. 416.) As the DMV offered no evidence indicating the test results were reliable despite Officer Filer's deviation from regulation 1219.3, the court did not abuse its discretion in excluding the

⁸ The DMV cites *Williams* for the proposition that test results may be admitted under the *Adams* criteria despite regulatory noncompliance. While this is correct as a general rule, in *Williams*, there was evidence supporting the test's reliability despite regulatory noncompliance (*Williams, supra*, 28 Cal.4th at pp. 417-418 & fn. 7), evidence the DMV failed to proffer here.

EPAS test results. The court could reasonably conclude the EPAS test results may have been skewed by mouth alcohol on account of White's burp.⁹ Absent the EPAS results, the court properly found insufficient admissible evidence to support a finding that White was driving a motor vehicle with a BAC of 0.08 percent. (See, e.g., *Molenda, supra*, 172 Cal.App.4th at p. 1001 [breath test results properly excluded where manner of test administration demonstrated regulatory noncompliance *and* lack of alternate *Adams* foundation].)

Briefly, as to the DMV's contention the trial court erroneously interpreted regulation 1219.3 to require a *separate* 15-minute observation period after the intervening PAS test, we agree with White that the DMV misconstrues the court's ruling. The court was unable to find a *single* 15-minute observation period before the EPAS test, on account of White's burp at some unknown point in time. Officer Filer's failure to observe White for 15 minutes meant the EPAS tests did not comply with regulation 1219.3 *and* were not "properly administered" under *Adams, supra*, 59 Cal.App.3d at p. 567. That Officer Filer took a PAS test was irrelevant; the court impliedly found that Officer Filer's

⁹ For the same reason, we reject the DMV's alternative claim that the trial court should have admitted the PAS test result into evidence. Given uncertainty in the record as to when White burped (in relation to either the PAS test or the EPAS tests), the trial court could reasonably conclude the PAS result lacked the foundational prerequisites under regulation 1219.3 or *Adams*.

conduct called into question whether mouth alcohol skewed the EPAS results.¹⁰ As discussed above, substantial evidence supports that finding.

DISPOSITION

The judgment is affirmed. White shall recover his costs on appeal.

BENKE, Acting P. J.

WE CONCUR:

AARON, J.

PRAGER, J.*

¹⁰ The DMV cites *Taxara, supra*, 114 Cal.App.4th 945, *Manriquez, supra*, 105 Cal.App.4th 1227, and *Hernandez v. Gutierrez* (2003) 114 Cal.App.4th 168 for the proposition that courts refuse to graft additional procedural requirements to the plain language of regulation 1219.3. Because we reject the claim the trial court did that here, those cases are inapposite.

* Judge of the San Diego Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.